

REMARKS/ARGUMENTS

Claims 1-9, 11, and 14-20 are active. A semicolon has been added to claim 1 before the “wherein clause”. No new matter has been introduced.

Foreign Priority Document

This Application is a national-stage filing under 35 U.S.C. §371. The Applicants respectfully request that the Examiner indicate that the certified copies of the foreign priority documents have been obtained from the International Bureau.

Rejection—35 U.S.C. §103(a)

Claims 1-9, 11, 14, 15 and 17-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gorkum, EP 1,063,285, in view of Clare, et al., U.S. Patent No. 4,720,389. These documents do not render the invention obvious because neither of them teaches an essential element of the invention, that is, that a “foam formation and/or a head retention substace” be added to the prefermentation liquid, see independent claim 1.

Page 3, lines 5-6 of the Official Action (“OA”) indicate that Van Gorkum is silent with respect to addition of a foam formation and/or head retention substance, but page 3 goes on to assert that the secondary reference, Clare, teaches this element in col. 1, lines 39-45, which discloses adding xanthan gum and a gallactomannan to stabilize foam retention in an (already) fermented malt beverage.

However, Clare does not disclose adding the foam retention substances to the prefermentation liquid. It teaches the opposite: “This material should be added to the malt beverage after the fermentation step”, col. 2, lines 66-67. This is not an insignificant difference, since unfermented foam formation and head retention agents contain substances like amino acid and sugars that add undesirable flavors, but which are removed by

fermentation. On the other hand, the method of the present invention requires the addition of a foam formation and/or head retention substance to the pre-fermentation liquid. Unlike the prior art method, this step required by the present claims permits fermentable components of the foam formation and/or head retention substance to be removed by fermentation. Neither Van Gorkum nor Clare teach this required method step and cannot render the present claims obvious. Accordingly, this rejection cannot be sustained.

Rejection—35 U.S.C. §103(a)

Claims 1-9, 11, 14-16, and 18-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gorkum, EP 1,063,285, in view of Kanazawa, et al., JP 05038275. Van Gorkum has been discussed above and does not disclose adding a foam formation and/or head retention substance to the prefermentation liquid.

Kanazawa does not disclose this either and is non-analogous art because it does not pertain to a fermentation method. It is simply directed to preparation of a fancy foamy drink by adding a combination of saponin and oligosaccharide to a liquor or a non-alcoholic beverage and is silent with respect to adding such a component to a prefermentation liquor. It cannot provide a reasonable expectation of success for a process in which such substances are added prior to a fermentation step or for the improved organoleptic properties resulting from addition to a prefermentation liquid. Therefore, as neither of the cited documents teaches the step of adding a foam formation and/or head retention substance to the prefermentation liquid, this rejection cannot be sustained.

Conclusion

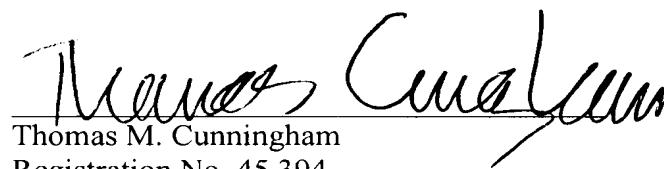
In view of the amendments and remarks above, the Applicants respectfully submit that this application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)


Thomas M. Cunningham
Registration No. 45,394